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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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RH CONSULTING INC and CROWN CELL INC, :

Plaintiffs, : **CIVIL ACTION NO.:** 17- CV- 2724

-against- :

VOLT PLUS, LLC, :

Defendant.

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COMPLAINT

Plaintiffs, Crown Cell Inc ("Crown Cell") and RH Consulting Inc ("RH Consulting"), through their attorney, THE RANDO LAW FIRM P.C., hereby allege as follows:

NATURE OF THE ACTION

1. In this action, Plaintiffs seek damages, injunctive relief, attorneys' fees, costs, and interest for Defendant Volt Plus's ("Volt Plus") acts of willful trademark infringement, false designation of origin, and counterfeiting under the Lanham Act, 15 U.S.C. §§ 1051-1127, and trademark infringement and unfair competition under NY Gen. Bus. Law § 300 and New York common law.

PARTIES

2. Plaintiff Crown Cell is a corporation duly organized and existing under the laws of the State of New York with a principal place of business at 1906 B Macarthur Road, Whitehall, PA, 18052.

3. Plaintiff RH Consulting is a corporation duly organized and existing under the laws of the State of New Jersey with a principal place of business at 580 Crown St., Apt. 315, Brooklyn, NY, 11213.

4. Upon information and belief, Volt Plus is a corporation formed under the laws of the State of Colorado with a principal place of business at 3700 Quebec Street, Suite 100-290, Denver, Colorado 80207.

JURISDICTION AND VENUE

5. This Court has jurisdiction over the subject matter of this action pursuant to 15 U.S.C. §§ 1114, 1116(a), 1121, and 1125(a) and 28 U.S.C. §§ 1331, 1338, and 1367.

6. Upon information and belief, Volt Plus, through its officers, agents and/or employees, markets and sells products in the State of New York and to New York residents, and actively transacts business in the State of New York and within this judicial district; and the tortious acts complained of herein have caused harm to Plaintiffs within this judicial district. Accordingly, personal jurisdiction exists over Volt Plus.

7. By way of example, Volt Plus, through its officers, agents and/or employees, markets and sells products through one or more storefronts on Amazon.com using interactive websites that are accessible in New York and in this judicial district.

8. Upon information and belief, Volt Plus uses or avails itself of the benefits of this jurisdiction utilizing these websites to target customers and conduct business in New York and

this judicial district. Among other things, these websites allow customers to order goods marketed with Plaintiffs' registered mark.

9. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b) and (c).

FACTUAL BACKGROUND

10. RH Consulting is the owner of U.S. Trademark Registration No. 4,811,878 for the mark BRIGHT CHARGE! ("the Mark") in connection with "power supply connectors and adaptors for use with portable electronic devices," as shown in Exhibit A.

11. Crown Cell uses the BRIGHT CHARGE! mark under license from RH Consulting, with all use inuring to the benefit of RH Consulting.

12. Plaintiffs have developed widespread name recognition and goodwill in the Mark through, *inter alia*, the use of the Mark by Crown Cell.

13. For example, Crown Cell has engaged in substantial use in commerce of the BRIGHT CHARGE! mark since at least as early as July 2014 in association with the sale of high-quality connectors and adaptors on Amazon.com, generating great value in the Mark.

14. Additionally, Crown Cell's sales of chargers and other accessories for portable electronic devices has created significant common law rights in the Mark.

15. The BRIGHT CHARGE! mark is non-functional, and the public recognizes and understands that the Mark distinguishes and identify goods sold, licensed or sponsored by Plaintiffs.

16. For several years, Crown Cell has extensively and continuously used and promoted the BRIGHT CHARGE! mark in connection with its goods.

17. Crown Cell has expended great effort and large sums of money in making the BRIGHT CHARGE! mark well-known to the public. Crown Cell has established a reputation

for excellence, quality, and reliability in connection with the goods it provides in conjunction with the Mark.

18. As a result of Crown Cell's efforts and substantial expenditures, and as a result of Crown Cell's superior reputation, Crown Cell enjoys virtually universal recognition of the BRIGHT CHARGE! mark in connection with its goods.

19. The BRIGHT CHARGE! mark has become well-known and is instantly recognizable to the public as being associated with the goods provided by or affiliated with Plaintiffs.

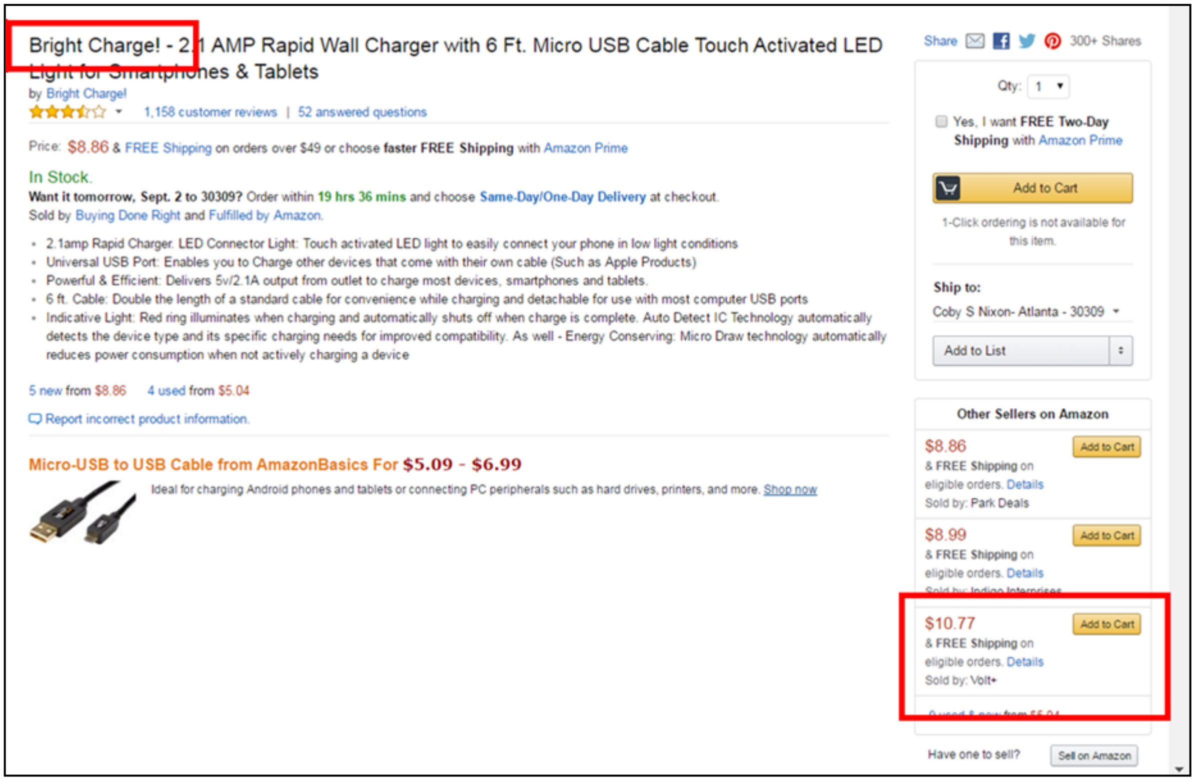
20. Without any sponsorship, approval, or permission from Plaintiffs, Volt Plus has been using the marks BRIGHT CHARGE! and BRIGHT CHARGE in connection with its offering of charger products on Amazon.com.

21. For example, attached as Exhibit B is a product listing created by Crown Cell in August 2014, in which it offers for sale its BRIGHT CHARGE! wall charger for use with smartphones and tablets. The BRIGHT CHARGE! mark is prominently featured in the Product Name portion of the listing. *See* Ex. B ("Bright Charge! - 2.1 AMP Rapid Wall Charger with 6 Ft. Micro USB Cable Touch Activated LED Light for Smartphones & Tablets").

22. Amazon specifically advises sellers to include the brand name (trademark) in the Product Name field to help customers identify the source of the product. *See* Exhibit C, Amazon.com Help page "Optimize Listings for Search and Browse" (showing a recommended Product Name field that begins with the brand name, LAURA ASHLEY).

23. Crown Cell's BRIGHT CHARGE! wall charger is identified by Amazon Standard Identification Number ("ASIN") B00M26DQBK. As shown below, Volt Plus (d/b/a Volt+) caused Amazon to associate Volt Plus's wall charger product with ASIN B00M26DQBK,

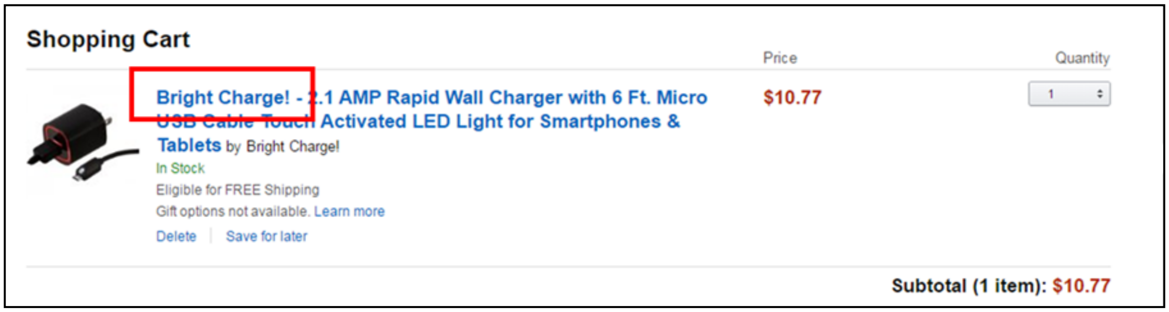
thereby enabling Volt Plus to offer its wall charger using Crown Cell's listing under the BRIGHT CHARGE! mark.

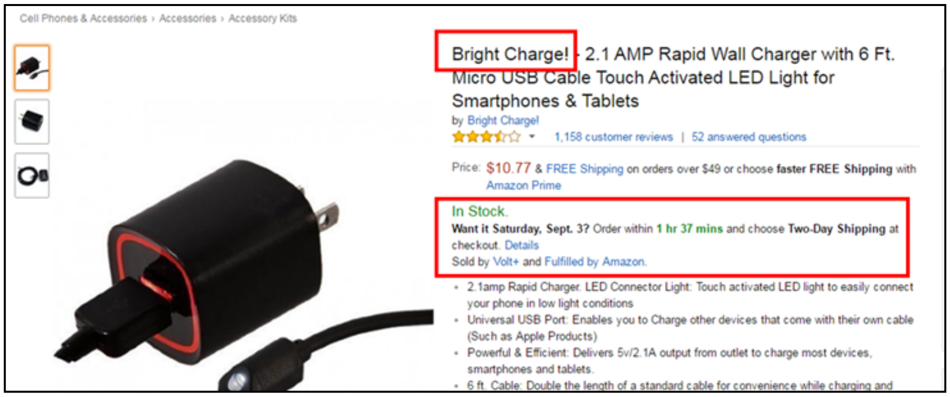


Bright Charge! - 2.1 AMP Rapid Wall Charger with 6 Ft. Micro USB Cable Touch Activated LED Light for Smartphones & Tablets
by Bright Charge!
1,158 customer reviews | 52 answered questions
Price: $8.86 & FREE Shipping on orders over $49 or choose faster FREE Shipping with Amazon Prime
In Stock.
Want it tomorrow, Sept. 2 to 30309? Order within 19 hrs 36 mins and choose Same-Day/One-Day Delivery at checkout.
Sold by Buying Done Right and Fulfilled by Amazon.
2.1amp Rapid Charger. LED Connector Light: Touch activated LED light to easily connect your phone in low light conditions
Universal USB Port: Enables you to Charge other devices that come with their own cable (Such as Apple Products)
Powerful & Efficient: Delivers 5v/2.1A output from outlet to charge most devices, smartphones and tablets.
6 ft. Cable: Double the length of a standard cable for convenience while charging and detachable for use with most computer USB ports
Indicative Light: Red ring illuminates when charging and automatically shuts off when charge is complete. Auto Detect IC Technology automatically detects the device type and its specific charging needs for improved compatibility. As well - Energy Conserving: Micro Draw technology automatically reduces power consumption when not actively charging a device
5 new from $8.86 4 used from $5.04
Report incorrect product information.
Micro-USB to USB Cable from AmazonBasics For $5.09 - $6.99
Ideal for charging Android phones and tablets or connecting PC peripherals such as hard drives, printers, and more. Shop now
Share 300+ Shares
Qty: 1
Yes, I want FREE Two-Day Shipping with Amazon Prime
Add to Cart
1-Click ordering is not available for this item.
Ship to:
Coby S Nixon- Atlanta - 30309
Add to List
Other Sellers on Amazon
$8.86
Add to Cart
& FREE Shipping on eligible orders. Details
Sold by: Park Deals
$8.99
Add to Cart
& FREE Shipping on eligible orders. Details
$10.77
Add to Cart
& FREE Shipping on eligible orders. Details
Sold by: Volt+
Have one to sell?
Sell on Amazon

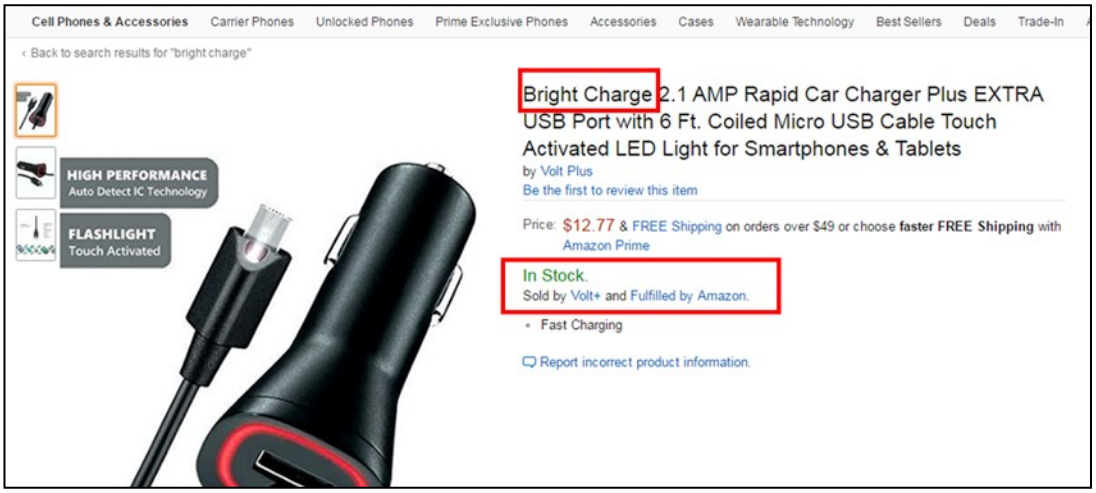
24. Indeed, even after a potential customer seeking to purchase a BRIGHT CHARGE! wall charger adds Volt Plus's wall charger to his or her Amazon cart, the customer continues to be given the false impression that Volt Plus's wall charger originates from the owner of the BRIGHT CHARGE! mark or that the owner of the BRIGHT CHARGE! mark is somehow connected or associated with Volt Plus's product. *See* Exs. D-E & screenshots reproduced in relevant part below.

25. The first screenshot shows the contents of the shopping cart after adding Volt Plus's product (note Volt Plus's price of $10.77) (Ex. D). The second screenshot shows the product detail page after clicking on the item in the shopping cart (Ex. E). In both cases, Volt Plus continues to unlawfully use the BRIGHT CHARGE! mark in connection with its product.


Shopping Cart
Price
Quantity
Bright Charge! - 2.1 AMP Rapid Wall Charger with 6 Ft. Micro USB Cable Touch Activated LED Light for Smartphones & Tablets by Bright Charge!
In Stock
Eligible for FREE Shipping
Gift options not available. Learn more
Delete
Save for later
$10.77
1
Subtotal (1 item): $10.77


Cell Phones & Accessories › Accessories › Accessory Kits
Bright Charge! 2.1 AMP Rapid Wall Charger with 6 Ft. Micro USB Cable Touch Activated LED Light for Smartphones & Tablets
by Bright Charge!
1,158 customer reviews | 52 answered questions
Price: $10.77 & FREE Shipping on orders over $49 or choose faster FREE Shipping with Amazon Prime
In Stock.
Want it Saturday, Sept. 3? Order within 1 hr 37 mins and choose Two-Day Shipping at checkout. Details
Sold by Volt+ and Fulfilled by Amazon.
2.1amp Rapid Charger. LED Connector Light: Touch activated LED light to easily connect your phone in low light conditions
Universal USB Port: Enables you to Charge other devices that come with their own cable (Such as Apple Products)
Powerful & Efficient: Delivers 5v/2.1A output from outlet to charge most devices, smartphones and tablets.

26. In addition, Volt Plus has used the confusingly similar mark BRIGHT CHARGE in its own listing to offer for sale a car charger identified by ASIN 9831399838. *See* Ex. F (product listing) and screenshot below.


Cell Phones & Accessories
Carrier Phones
Unlocked Phones
Prime Exclusive Phones
Accessories
Cases
Wearable Technology
Best Sellers
Deals
Trade-In
‹ Back to search results for "bright charge"
HIGH PERFORMANCE
Auto Detect IC Technology
FLASHLIGHT
Touch Activated
Bright Charge 2.1 AMP Rapid Car Charger Plus EXTRA USB Port with 6 Ft. Coiled Micro USB Cable Touch Activated LED Light for Smartphones & Tablets
by Volt Plus
Be the first to review this item
Price: $12.77 & FREE Shipping on orders over $49 or choose faster FREE Shipping with Amazon Prime
In Stock.
Sold by Volt+ and Fulfilled by Amazon.
Fast Charging
Report incorrect product information.

27. In addition to the foregoing examples, other deceptive uses of the BRIGHT CHARGE! mark and/or other confusingly similar marks by Volt Plus may be discovered as facts come to light.

28. In this regard, upon information and belief, Volt Plus owns, operates, or controls, through its officers, agents, and/or employees, multiple seller accounts (i.e., storefronts) that sell overlapping products on Amazon.com. In addition to the storefront "Volt+," Volt Plus is believed to operate one or more of the storefronts: "Active+," "RT Solutions," "ACCKEY," "Taobao Mall," "Kings," "Volley," "MaxJoy LLC," and "NU-TEK," if not others.

Volt Plus's Misappropriation of the BRIGHT CHARGE! Mark

29. Volt Plus's use of the BRIGHT CHARGE! mark and confusingly similar imitations is likely to deceive, confuse, and mislead prospective purchasers and purchasers into believing that the goods marketed, sold, distributed, and offered for sale by Volt Plus are produced by, authorized by, or in some manner associated with or sponsored by Plaintiffs, which they are not. The likelihood of confusion, mistake, and deception engendered by this wholesale and brazen misappropriation of the BRIGHT CHARGE! mark has caused irreparable harm to the goodwill symbolized by the Mark and the reputation for quality and excellence that it embodies, and that harm is ongoing.

30. Purchasers, prospective purchasers and others viewing the BRIGHT CHARGE! mark and confusingly similar imitations in connection with Volt Plus's goods are likely to mistakenly attribute the goods to Plaintiffs. These activities are therefore likely to cause confusion before, during, and after the time of purchase or use (or attempted purchase or use) of Volt Plus's goods. This is particularly damaging with respect to those persons who may perceive a defect or lack of quality in Volt Plus's reputation or products. By causing such a likelihood of confusion, mistake, and deception, Volt Plus has inflicted irreparable harm to Plaintiffs' goodwill in the BRIGHT CHARGE! mark, and the reputation for quality and excellence that it embodies, and that harm is ongoing.

31. Volt Plus is using the BRIGHT CHARGE! mark and confusingly similar imitations in connection with goods that are directly competitive with or related to Crown Cell's goods and services or within Crown Cell's natural zone of expansion.

32. Volt Plus's unauthorized use of the BRIGHT CHARGE! mark and confusingly similar imitations is commercial in nature and is intended to, and will, directly compete with the lawful publication, distribution and advertising commercial activities of Crown Cell to the detriment of Plaintiffs.

33. On information and belief, Volt Plus knowingly, willfully, and intentionally used the BRIGHT CHARGE! mark and confusingly similar imitations to trade on the goodwill symbolized by the BRIGHT CHARGE! mark and the reputation for quality and excellence that it embodies.

34. Upon information and belief, Volt Plus deliberately employed the BRIGHT CHARGE! mark and confusingly similar imitations to mislead and confuse consumers that Volt Plus's goods are provided, sponsored, affiliated with, licensed or approved by Plaintiffs. Volt Plus thus unfairly benefits from the goodwill and excellent reputation of the BRIGHT CHARGE! mark established by Plaintiffs throughout the United States and internationally at great effort and expense.

35. Volt Plus has not now, and has never been, authorized by Plaintiffs to use the BRIGHT CHARGE! mark or any other colorable imitations of the BRIGHT CHARGE! mark in connection with any goods or services, nor have Plaintiffs consented to any such use.

36. Through Volt Plus's use of colorable imitations of the BRIGHT CHARGE! mark and confusingly similar imitations, Plaintiffs' goodwill has suffered irreparable harm, which harm will continue as long as Volt Plus's unauthorized uses continue.

37. The relatedness, or similarity, between Crown Cell's products and Volt Plus's infringing products point to a high likelihood of confusion. Consumers interested in purchasing Crown Cell's products are likely to believe, mistakenly, that Volt Plus's products come from the same source, or is somehow connected with or licensed by Plaintiffs.

38. Given the identical nature of the goods provided under the BRIGHT CHARGE! mark, the above-described conduct constitutes trading off of the extensive goodwill Plaintiffs have developed in the Mark.

FIRST CLAIM FOR RELIEF
Trademark Infringement of the BRIGHT CHARGE! Mark
Under Section 32 of the Lanham Act
(15 U.S.C. § 1114)

39. Plaintiffs hereby incorporate and re-allege the assertions in paragraphs 1-38 as if fully set forth herein.

40. Plaintiffs own a valid and enforceable federal trademark registration for the BRIGHT CHARGE! mark (*see* Exhibit A).

41. Volt Plus's use of the BRIGHT CHARGE! mark and BRIGHT CHARGE mark in connection with its goods is likely to cause confusion, deception, and mistake by creating the false and misleading impression that Volt Plus's goods are produced or distributed by Plaintiffs, or are associated or connected with Plaintiffs, or have the sponsorship, endorsement, or approval of Plaintiffs, and as such constitutes infringement of the BRIGHT CHARGE! mark in violation of Section 32 of the Lanham Act, 15 U.S.C. § 1114.

42. Unless enjoined, Volt Plus will continue to cause a likelihood of confusion and deception of members of the public and, additionally, injury to Plaintiffs' goodwill and reputation as embodied in the BRIGHT CHARGE! mark, for which Plaintiffs have no adequate remedy at law.

43. Volt Plus's actions demonstrate an intentional, willful, and malicious intent to trade on the goodwill associated with Plaintiffs' federally registered BRIGHT CHARGE! mark to Plaintiffs' great and irreparable injury.

44. Volt Plus has caused and is likely to continue causing substantial injury to the public and to Plaintiffs, and Plaintiffs are entitled to injunctive relief and to recover Volt Plus's profits, actual damages, enhanced profits and damages, costs, and reasonable attorneys' fees under 15 U.S.C. §§ 1114, 1116 and 1117.

SECOND CLAIM FOR RELIEF
Unfair Competition and False Designation of Origin as to the BRIGHT CHARGE! Mark Under Section 43(a) of the Lanham Act (15 U.S.C. § 1125(a)(1)(A))

45. Plaintiffs hereby incorporate and re-allege the assertions in paragraphs 1 to 44 above as if fully set forth herein.

46. Through extensive use of the BRIGHT CHARGE! mark for several years, Plaintiffs have developed extensive goodwill rights in the Mark, which goodwill is protected by, *inter alia*, Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

47. Volt Plus's use of the BRIGHT CHARGE! mark and confusingly similar imitations has caused and/or is likely to cause confusion, deception, and mistake by creating the false and misleading impression that Volt Plus's goods are produced or distributed by Plaintiffs, or are associated or connected with Plaintiffs, or have the sponsorship, endorsement, or approval of Plaintiffs.

48. Volt Plus has made false representations, false descriptions, and false designations of origin of its goods and services in violation of 15 U.S.C. § 1125(a), and Volt Plus's activities have caused and, unless enjoined by this Court, will continue to cause a likelihood of confusion and deception of members of the public and, additionally, injury to Plaintiffs' goodwill and

reputation as embodied in the BRIGHT CHARGE! mark, for which Plaintiffs have no adequate remedy at law.

49. Volt Plus's actions demonstrate an intentional, willful, and malicious intent to trade on the goodwill associated with the BRIGHT CHARGE! mark to the great and irreparable injury to Plaintiffs.

50. Volt Plus's conduct has caused, and is likely to continue causing, substantial injury to the public and to Plaintiffs, and Plaintiffs are entitled to injunctive relief and to recover Volt Plus's profits, actual damages, enhanced profits and damages, costs, and reasonable attorneys' fees pursuant to 15 U.S.C. §§ 1116 and 1117.

THIRD CLAIM FOR RELIEF
Counterfeiting under Section 32 of the Lanham Act

51. Plaintiffs hereby incorporate and re-allege the assertions in paragraphs 1 to 50 above as if fully set forth herein.

52. Volt Plus, without authorization from Plaintiffs, has sold, offered for sale, distributed and/or advertised chargers and related goods using counterfeits or colorable imitations of the BRIGHT CHARGE! mark.

53. Volt Plus's actions are intended to cause, have caused and are likely to continue to cause confusion, mistake and deception among consumers and the public as to whether Volt Plus's infringing products originate from or are affiliated with, sponsored by or endorsed by Plaintiffs.

54. Volt Plus has acted with knowledge of Plaintiffs' ownership of the BRIGHT CHARGE! mark and with deliberate, willful intention to trade upon the consumer goodwill created and enjoyed by Plaintiffs for Volt Plus's profit.

55. Volt Plus's acts constitute trademark counterfeiting in violation of 15 U.S.C.

Section 1114.

56. Volt Plus's conduct has caused, and is likely to continue causing, substantial injury to the public and to Plaintiffs, and Plaintiffs are entitled to injunctive relief and to recover Volt Plus's profits, actual damages, statutory damages, enhanced profits and damages, costs, and reasonable attorneys' fees pursuant to 15 U.S.C. §§ 1114, 1116 and 1117.

FOURTH CLAIM FOR RELIEF
Violation of New York General Business Law § 360

57. Plaintiffs hereby incorporate and re-allege the assertions in paragraphs 1 to 56 above as if fully set forth herein.

58. For several years, Plaintiffs have made exclusive use of the BRIGHT CHARGE! mark in connection with a variety of goods.

59. Volt Plus's use of the BRIGHT CHARGE! mark and confusingly similar imitations has caused and is likely to cause confusion, deception, and mistake by creating the false and misleading impression that Volt Plus's goods are manufactured or distributed by Plaintiffs, or are associated or connected with Plaintiffs, or have the sponsorship, endorsement, or approval of Plaintiffs. The BRIGHT CHARGE! mark is unique, distinctive, and has acquired secondary meaning.

60. Volt Plus, by virtue of its acts as alleged above, has willfully, knowingly, maliciously and intentionally engaged in acts of infringement in violation of NY Gen. Bus. Law § 300.

61. Volt Plus's conduct has caused, and if not enjoined, will continue to cause irreparable damage to Plaintiffs in a manner that cannot be calculated or compensated in money damages. Plaintiffs have no adequate remedy at law.

62. Pursuant to NY Gen. Bus. Law § 300-m, Plaintiffs are entitled to injunctive relief,

profits, and treble damages, as well as attorneys' fees and costs of this action.

FIFTH CLAIM FOR RELIEF
Common Law Trademark Infringement and Unfair Competition

63. Plaintiffs hereby incorporate and re-allege the assertions in paragraphs 1 to 62 above as if fully set forth herein.

64. For several years, Plaintiffs have made exclusive use of the BRIGHT CHARGE! mark in connection with a variety of goods.

65. Volt Plus's use of the BRIGHT CHARGE! mark and confusingly similar imitations has caused and is likely to cause confusion, deception, and mistake by creating the false and misleading impression that Volt Plus's goods are manufactured or distributed by Plaintiffs, or are associated or connected with Plaintiffs, or have the sponsorship, endorsement, or approval of Plaintiffs. The BRIGHT CHARGE! mark is unique, distinctive, and has acquired secondary meaning.

66. Volt Plus, by virtue of its acts as alleged above, has willfully, knowingly, maliciously and intentionally engaged in acts of trademark infringement and unfair competition under New York common law.

67. As a direct and proximate result of Volt Plus's actions, Plaintiffs have suffered, and will continue to suffer, monetary loss and irreparable injury to their business, reputation, and goodwill.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs demand judgment against Volt Plus as follows:

(a) The Court enter judgment that Defendant has engaged in trademark infringement in violation of Section 32 of the Lanham Act, 15 U.S.C. § 1114, has engaged in false designation of origin in violation of Section 43 of the Lanham Act, 15 U.S.C. § 1125(a), has engaged in counterfeiting in violation of 15 U.S.C. § 1114, and has engaged in trademark infringement in violation of the New York General Business Law § 300;

(b) On Plaintiff's First, Second, and Third Claims for Relief, damages, disgorgement of Defendant's profits, enhanced damages (including treble damages for willfulness and statutory damages for counterfeiting), attorneys' fees, costs, prejudgment interest, preliminary and permanent injunctive relief prohibiting Defendant from further violations of the Lanham Act, and a destruction order requiring that Defendant deliver up and destroy all goods, merchandise, products, labels, signs, prints, packaging, wrappers, containers, advertising materials, Internet images, and other materials that constitute or reproduce the BRIGHT CHARGE! mark or any other marks confusingly similar to the BRIGHT CHARGE! mark;

(c) On Plaintiff's Fourth Claim for Relief, injunctive relief prohibiting further violations of New York General Business Law § 300, Defendant's profits, enhanced damages, attorneys' fees and costs;

(d) On Plaintiff's Fifth Claim for Relief, injunctive relief, damages, attorneys' fees and costs;

(e) An award of Plaintiffs' costs associated with this action;

(f) An award of prejudgment interest; and

(g) On each of Plaintiff's claims for relief, such further and other relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby requests a trial by jury on all issues so triable.

Dated: May 4, 2017
Syosset, NY

Respectfully submitted,

THE RANDO LAW FIRM P.C.

By: /s/ Robert J. Rando
Robert J. Rando (RR-5765)

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